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**MAY 23 2008**

**IN THE CLAIMS**

Please amend claims 1 as indicated in the following list of pending claims.

**PENDING CLAIMS**

1. (Currently Amended) A biopsy instrument for retrieving tissue specimen from surrounding tissue at a target site, having a longitudinal axis and a tissue penetrating distal tip, comprising:
  - a housing;
  - an elongated shaft having a longitudinal axis and a proximal end within the housing; and
  - an elongated electrosurgical cutting element longitudinally disposed on a distal portion of the shaft proximal to the distal tip which is actuatable between a radially retracted position and a radially extended position and which is rotationally movable in said radially extended position to electrosurgically isolate a desired tissue specimen from surrounding tissue at the target site by defining a peripheral margin about said tissue specimen;
  - an outer sheath slidably disposed about the shaft; ~~[[and]]~~
  - a first longitudinal driving member in the housing secured to the outer sheath and configured for axial movement to axially move the outer sheath between distal and proximal positions for selectively covering and uncovering the electrosurgical cutting element;
  - a rotating driving member in the housing connected to the proximal ~~[[end]]~~ portion of the elongated shaft to rotate the shaft with respect to the housing and to rotate the

elongated electrosurgical cutting element secured to the distal portion of the shaft;

[[and]]

a second longitudinal driving member in the housing secured to the proximal portion of the elongated shaft configured to axially move the elongated shaft; and

a third longitudinal driving member slidably disposed within the outer sheath having a proximal portion in the housing and a distal portion connected to the elongated electrosurgical cutting element to actuate the cutting element between the radially retracted position and the radially extended position.

2-39. (Cancelled)

40. (Previously presented) The biopsy instrument of claim 1 wherein the electrosurgical tissue cutting element receive electrical power from a high frequency electrical power source to electrosurgically isolate a desired tissue specimen from surrounding tissue by defining a peripheral margin about at least part of the tissue specimen when in the radially extended position.

41. (Previously presented) The biopsy instrument of claim 40 which includes an electrical conductor configured to electrically interconnect the electrosurgical tissue cutting element to the high frequency electrical power source.

42. (Previously presented) The biopsy instrument of claim 40 wherein the electrosurgical cutting element has a proximal end and a distal end and which is configured to move one end closer to the other end to effect radial extension from the retracted position to the radial extended position.

43. (Previously presented) The biopsy instrument of claim 42 wherein the electrosurgical cutting element is configured so that the distal end is fixed and the proximal end moves toward the distal end in order to radially extend the electrosurgical cutting element.

44. (Previously presented) The biopsy instrument of Claim 40, wherein the electrosurgical cutting element comprises a monopolar electrode.

45. (Previously presented) The biopsy instrument of Claim 40, wherein the electrosurgical cutting element comprises a bipolar electrode.

46. (Cancelled)

47. (Previously presented) The biopsy instrument of Claim 40, including a proximal driver unit for controlling radial expansion and retraction of the electrosurgical cutting element and rotation of the cutting element about the longitudinal axis.

48. (Previously presented) The biopsy instrument of Claim 47, wherein the proximal driver unit further controls axial movement of said shaft and axial movement of said sheath.

49. (Previously presented) The biopsy instrument of Claim 40, wherein the electrosurgical cutting element is configured to be manipulated to segment the tissue specimen.

50. (Previously presented) The biopsy instrument of Claim 49, wherein the electrosurgical tissue cutting element is configured to segment the tissue specimen after tissue specimen has been isolated from the surrounding tissue.

51. (Previously presented) The biopsy instrument of claim 49 wherein the tissue cutting element is configured to segment the tissue specimen as the tissue specimen is being retracted from said radially extended position to said retracted position.

52. (Previously presented) The biopsy instrument of Claim 51, wherein the radially extended position comprises a first radially extended position, and wherein the electrosurgical cutting element is further actuatable to a plurality of additional radially extended positions and rotatable about the longitudinal axis in each of said radially extended positions to selectively peripherally segment said tissue specimen.

53. (Previously presented) The biopsy instrument of Claim 50, further comprising a cannula having a lumen for providing a passageway into the patient's body, the segments of the tissue specimen being removable from the patient's body through the cannula.

54-56. (Cancelled)